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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 GEORGE PRUE,

10 Plaintiff,

11 v.

12 UNIVERSITY OF WASHINGTON, *et*
al.,

13 Defendants.
14

Case No. C07-1859RSL

ORDER GRANTING IN PART AND
DENYING IN PART MOTION
FOR SUMMARY JUDGMENT

15
16 **I. INTRODUCTION**

17 This matter comes before the Court on a motion for summary judgment filed by
18 defendants the University of Washington and University employee Rachael Hogan
19 (collectively, “defendants”).¹ Plaintiff contends that defendants discriminated against him
20 based on his race, African-American, and his age, 55-years-old, by failing to hire him for
21 an open temporary position. Plaintiff also contends that after he complained of
22 discrimination, the University retaliated against him.

23
24 ¹ Plaintiff previously dismissed with prejudice his claims against a third defendant,
25 Joanne Suffis.

1 For the reasons set forth below, the Court grants in part and denies in part
2 defendants' motion.

3 II. DISCUSSION

4 A. Background Facts.

5 The University's UTemp Staffing Program ("U-Temps") provides on-site
6 temporary staff to University staff as needed. It serves the entire University community
7 and has an on-going pool of approximately 300 temporary staff. U-Temps staffing
8 coordinators screen potential applicants to join a pool of candidates for short-term,
9 temporary assignments as they become available.

10 In August 2005, plaintiff interviewed with Aaron Hinkhouse, a staffing
11 coordinator with U-Temps to become a temporary staffing candidate. Hinkhouse found
12 plaintiff to be "outgoing," he could "talk with almost anyone," and his communications
13 skills were "good" but not "strong." Hinkhouse Dep. at p. 95. After the interview,
14 Hinkhouse entered the following notes into the "availability" screen on the U-Temps
15 database:

16 George has a lot of work experience. His most relevant is an 8 year stint as an
17 Exec Assistant & Patient Advocate at a hospital in the Virgin Islands. In this role,
18 he interacted with lots of patients and supported several higher level doctors; but
19 he didn't do a lot of clerical support, and as a result does not have strong computer
20 skills. Lately he has been teaching and he wants to get away from that. He says
21 he's open to ANYthing, very interested in perm. Possibly his experience is not as
22 strong as it appears or is not easily transferable to admin support, and maybe his
23 first assignment should be lighter/shorter.

24 Declaration of Aaron Hinkhouse, (Dkt. #34) ("Hinkhouse Decl."), Ex. A. The notes were
25 available for potential hiring professionals to review.

26 In August 2005, the Department of Medical Education and Biomedical Informatics
("MEBI") sought assistance from U-Temps to obtain candidates to interview for a
temporary position as an administrative coordinator. The position involved performing

1 “office mgmt and complex admin support for [the MEBI department]. Reception/office
2 duties, faculty support, program support, fiscal support, event planning and facilities
3 mgmt support. Additionally, interpret UW policies and coordinate special projects as
4 assigned.” Hinkhouse Decl., Ex. C. The MEBI department provides training, research,
5 and service in education and data evaluation related to health care. Although U-Temps
6 frequently assigns candidates to fill openings, in this case, MEBI wanted to interview and
7 select a person to fill the administrative coordinator position. Hogan, who formerly held
8 the position on a permanent basis, was transitioning into another role. She conducted all
9 of the interviews for the position. Hogan’s supervisor, Sheryl Vick, selected a candidate,
10 that person performed the job for one week, then accepted another position. MEBI
11 contacted U-Temps to find additional candidates.

12 Hinkhouse referred plaintiff to interview for the position even though it required
13 strong clerical skills, and Hinkhouse assessed plaintiff’s clerical skills at a beginner level.
14 During the second round of interviews, Hogan interviewed four candidates, including
15 plaintiff and Kevin Kovach. Hogan interview Kovach just before she interviewed
16 plaintiff. Kovach’s interview lasted less than ten minutes.

17 Although Hogan received plaintiff’s resume the day before the interview, she did
18 not have time to review it until just before she interviewed him. Hogan Dep. at p. 115.
19 Plaintiff did not read the job description before his interview. He mistakenly believed
20 that he was being placed in the position rather than needing to be interviewed and hired.
21 Plaintiff’s Dep. at pp. 26-27.

22 Hogan began plaintiff’s interview by asking him to tell her about himself. Hogan
23 and plaintiff disagree regarding what occurred after that point. According to Hogan,
24 plaintiff began talking about his outreach work related to Hurricane Katrina. When she
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1 asked him what kind of work he was seeking, he said he wanted to “help people” or “help
2 patients.” Hogan Dep. at pp. 137-38. Hogan explained that MEBI does not involve
3 patient interaction, though it was a common misunderstanding about the department.
4 While she explained what the department did, plaintiff repeatedly said “okay” without
5 elaboration or any indication that he was interested in assisting with that work. Id. at pp.
6 138-39. Hogan explained that if plaintiff was interested in working with patients, he
7 should seek positions with the medical center, to which plaintiff replied, “okay.” Id. at
8 pp. 139-40. Although Hogan contends that she paused and gave plaintiff an opportunity
9 to correct her and express interest in the position, he did not do so. Id. at pp. 143-44.
10 Hogan wrote on plaintiff’s resume, “Wants UW job med ctrs?” Declaration of Rachel
11 Hogan, (Dkt. #38) (“Hogan Decl.”) at ¶ 15 and attachment.

12 Plaintiff’s version of the interview is very different. According to him, he began
13 telling Hogan about his experience as an executive secretary for two administrators at a
14 hospital in the Virgin Islands. Declaration of George Prue, (Dkt. #47) at ¶ 11. Hogan cut
15 him off and stated, “This job is not for you. Mr. Hinkhouse spoke too fast.” Id. Hogan
16 then suggested he might be more interested in jobs at the hospitals or jobs involving
17 patient care. She ended the interview and ushered plaintiff from the room. Plaintiff states
18 that he was shocked by Hogan’s comments and actions. He states that Hogan cut him off
19 after one sentence, so he never got an opportunity to discuss his education, work
20 experience, or qualifications. Id. at ¶ 12; Prue Dep. at pp. 24-25, 28. He denies telling
21 Hogan that he was not interested in the administrative coordinator position or that he was
22 only seeking jobs in medical administration.

23 After the interviews, Hogan recommended to Vick that she hire Kovach because
24 he was eager to perform the job. Hogan Dep. at p. 117. Vick only reviewed Kovach’s
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1 resume. Vick Dep. at p. 41. Vick hired Kovach based on Hogan's recommendation. Id.
2 at pp. 41-43. She was looking for someone who had an interest in being part of the
3 department because the position involved greeting visitors. Id. at p. 31. Hogan told Vick
4 that plaintiff did not want the position but was instead interested in patient care. Id. at pp.
5 41, 46-47.

6 On September 6, 2005, plaintiff sent an e-mail to Joanne Suffis, Vice President for
7 Human Resources, complaining that he had been discriminated against in the interview
8 with Hogan. Plaintiff's Dep., Ex. 11 (stating that "she saw me, i.e., African American
9 and spoke to me for a quick two minutes;" "I felt as if I was badly discriminated
10 against"). Suffis forwarded the e-mail to UTemp staffing manager Laura Andrews, who
11 followed up with plaintiff. Plaintiff does not recall sending the e-mail to Suffis or
12 speaking with Andrews. On September 13, for unknown reasons,² Andrews posted
13 plaintiff's September 6 e-mail to his employee profile on the U-Temps staffing database.
14 Hinkhouse Dep. at pp. 132-33, Exs. 11 & 12. Every U-Temps staffing coordinator has
15 access to the information in the database, including employee profiles.

16 After plaintiff sent the e-mail to Suffis, he was offered assignments repairing
17 office chairs, moving furniture, parking cars, and working as a mail room clerk. In early
18 October 2005, he stopped calling U-Temps to seek work because he believed that he was
19 in a "pattern" of receiving referrals only for blue collar work. Plaintiff's Dep. at pp. 134-
20 35. During his initial interview with Hinkhouse, plaintiff was told that he should call U-
21 Temps once a week to confirm his on-going interest and availability for work.

22 Around September 28, 2005, plaintiff contacted the University Complaint
23 Investigation and Resolution Office ("UCIRO") to request an investigation into his
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25 ² Andrews has since died and was not deposed in this matter.

1 allegations of race and age discrimination. UCIRO did not find support for plaintiff's
2 claims. Around March 21, 2006, plaintiff filed a charge of race and age discrimination
3 with the Equal Employment Opportunity Commission ("EEOC"). After conducting an
4 investigation, the EEOC investigator issued a finding determining "that there is
5 reasonable cause to believe that the allegations are true." Prue Decl., Ex. 2. After the
6 EEOC issued its finding, the University disciplined Hogan because she "[f]ailed to use
7 good judgment and follow university practices in using consistent interviewing
8 techniques for all applicants during the interview process." Vick Dep. at p. 119;
9 Declaration of Jillian Cutler, (Dkt #48), Ex. C.

10 Against Hogan, plaintiff asserts claims for a violation of 42 U.S.C. § 1981 and for
11 a violation of 42 U.S.C. § 1983 based on an alleged violation of his right to equal
12 protection. Plaintiff asserts claims against the University for violations of Title VII of the
13 Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e *et seq.*; the Age Discrimination
14 in Employment Act of 1967 ("ADEA"), 29 U.S.C. § 29 U.S.C. § 621 *et seq.*; and the
15 Washington Law Against Discrimination ("WLAD"), RCW 49.60 *et seq.*

16 **B. Summary Judgment Standard and Evidentiary Issue.**

17 Summary judgment is appropriate when, viewing the facts in the light most
18 favorable to the nonmoving party, the records show that "there is no genuine issue as to
19 any material fact and that the movant is entitled to judgment as a matter of law." Fed. R.
20 Civ. P. 56(c). Once the moving party has satisfied its burden, it is entitled to summary
21 judgment if the non-moving party fails to designate, by affidavits, depositions, answers to
22 interrogatories, or admissions on file, "specific facts showing that there is a genuine issue
23 for trial." Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).

24 All reasonable inferences supported by the evidence are to be drawn in favor of the
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1 nonmoving party. See Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054, 1061 (9th Cir.
2 2002). “[I]f a rational trier of fact might resolve the issues in favor of the nonmoving
3 party, summary judgment must be denied.” T.W. Elec. Serv., Inc. v. Pacific Elec.
4 Contractors Ass’n, 809 F.2d 626, 631 (9th Cir. 1987). “The mere existence of a scintilla
5 of evidence in support of the non-moving party’s position is not sufficient.” Triton
6 Energy Corp. v. Square D Co., 68 F.3d 1216, 1221 (9th Cir. 1995). “[S]ummary
7 judgment should be granted where the nonmoving party fails to offer evidence from
8 which a reasonable jury could return a verdict in its favor.” Id. at 1221.

9 Plaintiff filed a surreply requesting that the Court strike the Supplemental
10 Declaration of Jayne Freeman and attachments thereto submitted with defendants’ reply
11 to the motion. Plaintiff notes that it is “unfair” for a defendant to submit new evidence
12 with its reply. Surreply at p. 1 (citing Provenz v. Miller, 102 F.3d 1478, 1483 (9th Cir.
13 1996)). In this case, the supplemental declaration does not provide evidence that supports
14 new arguments or otherwise creates an unfair advantage for defendants. Rather, the
15 evidence supports arguments which defendants made in their motion and plaintiff had an
16 ample opportunity to address. Moreover, the evidence is cumulative and would not
17 change the result. Accordingly, the Court will not strike the materials.

18 **C. Analysis.**

19 **1. Discrimination Claim.**

20 To establish a prima facie case of discrimination under Title VII, the ADEA and/or
21 the WLAD, plaintiff must show that (1) he is a member of a protected class, (2) he
22 applied for and was qualified for the position, (3) he was denied the position despite his
23 qualifications, and (4) the position was filled with someone outside the protected class.
24 See, e.g., Coghlan v. American Seafoods Co., LLC, 413 F.3d 1090, 1094 (9th Cir. 2005);

1 Rose v. Wells Fargo & Co., 902 F.2d 1417, 1421 (9th Cir. 1990) (evaluating an ADEA
2 claim).

3 As an initial matter, plaintiff's filings reference numerous positions that he applied
4 for but did not receive at the University. His amended complaint, however, clarifies that
5 he is asserting a discrimination claim based only on defendants' failure to hire him for the
6 administrator coordinator position. Amended Complaint at ¶¶ 7.3, 8.3, 9.3.

7 As for the MEBI position, defendants argue that plaintiff has not established a
8 prima facie case of discrimination because the University did not continue to seek
9 applicants after interviewing plaintiff. However, requiring plaintiff to demonstrate that
10 fact would make little sense in this case when the University actually selected a
11 candidate. In that circumstance, plaintiff is required to show that defendants selected
12 someone outside of his protected class. See, e.g., Coghlan, 413 F.3d at 1094. Kovach is
13 Caucasian, so plaintiff has done so. Similarly, defendants argue that Hogan found
14 Kovach to be qualified before she interviewed plaintiff. That fact, however, is irrelevant
15 because Hogan did not *hire* anyone prior to interviewing plaintiff. Therefore, at the time
16 Hogan considered plaintiff for the position, the position remained open.

17 Defendants also argue that plaintiff was not treated differently because Kovach's
18 interview was brief too. However, Kovach's interview, although also brief, lasted
19 approximately twice as long as plaintiff's interview. More importantly, Kovach's
20 interview lasted long enough for him to describe his prior work experience and to
21 establish a rapport with Hogan. Different treatment is also shown by the fact that Kovach
22 was hired for the job. Plaintiff has demonstrated a prima facie case of discrimination.

23 Because plaintiff established a prima facie case of discrimination, the burden shifts
24 to defendants to articulate a legitimate, non-discriminatory reason for its failure to hire
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1 him. See, e.g., Kuyper v. Department of Wildlife, 79 Wn. App. 732, 735 (1995). As
2 plaintiff concedes, defendants have done so. Hogan states that she did not recommend
3 plaintiff for the position because of his apparent lack of interest and enthusiasm for the
4 position. In contrast, she recommended Kovach because he was qualified and seemed
5 eager to perform the job. Hogan Dep. at p. 117; Hogan Decl. at ¶¶ 12-14; Declaration of
6 Sheryl Vick, (Dkt. #37) (“Vick Decl.”) at ¶ 11.

7 Because defendants have asserted a legitimate non-discriminatory reason, the
8 burden shifts back to plaintiff to establish that the reason given is a pretext for
9 discrimination. Kuyper, 79 Wn. App. at 735. To establish pretext, a plaintiff must
10 provide “some evidence that the articulated reason for the employment decision is
11 unworthy of belief.” Id. at 738. A plaintiff can do so by showing that “the reason has no
12 basis in fact, it was not really a motivating factor for the decision, it lacks a temporal
13 connection to the decision or was not a motivating factor in employment decisions for
14 other employees in the same circumstances.” Id. (citing Sellsted v. Washington Mut. Sav.
15 Bank, 69 Wn. App. 852, 859-60 n.14 (1993)); Chuang v. University of Cal. Davis, 225
16 F.3d 1115, 1127 (9th Cir. 2000) (explaining that under Title VII, a plaintiff can show
17 pretext “(1) indirectly, by showing that the employer’s proffered explanation is unworthy
18 of credence because it is internally inconsistent or otherwise not believable, or (2)
19 directly, by showing that unlawful discrimination more likely motivated the employer”)
20 (internal citation and quotation omitted). Under the WLAD, plaintiff must show that
21 discrimination was a “substantial factor” in the hiring decision. See, e.g., Domingo v.
22 Boeing Employees’ Credit Union, 124 Wn. App. 71, 77 (2004).

23 In this case, plaintiff has not alleged any direct evidence of discrimination, such as
24 discriminatory remarks. The Court therefore considers whether there is sufficient indirect
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1 evidence of discrimination. Plaintiff is not required to produce a “smoking gun.” Rather,
2 he can discharge his burden with evidence that is “circumstantial, indirect, and
3 inferential.”³ Chen v. Washington, 86 Wn. App. 183, 190 (1997). Although defendants
4 claim that plaintiff’s lack of clerical experience was a motivating factor, defendants hired
5 Kovach despite what Hogan described as his “light skills.”⁴ Hinkhouse Dep. at p. 110;
6 id., Ex. 8.

7 Defendants also contend that they did not hire plaintiff because he appeared
8 uninterested in the position and did not sell himself. Hogan’s version of the interview
9 supports that assertion and is bolstered by other evidence of what she did and said shortly
10 afterward. However, at this stage of the proceedings, the Court must credit plaintiff’s
11 version as true for purposes of this motion. Moreover, plaintiff contends that he, unlike
12 other candidates, was not given a chance to sell himself or to express his interest in the
13 position.⁵ Rather, Hogan cut plaintiff off after one sentence. Prue Dep. at pp. 71-72. In
14 addition, the MEBI department did not include any African-American faculty, staff, or
15 students. Johnson Dep. at p. 158 & Ex. 29. Moreover, the University found that Hogan
16 had conducted the interviews in an inconsistent manner and disciplined her for doing so.
17 At this point, it is unclear whether the different interviewing treatment was motivated by
18 discriminatory animus or the result of a harried professional seeking to complete the
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20 ³ Plaintiff relies heavily on the EEOC’s reasonable cause finding. The Court,
21 however, gives that finding very little weight because it is conclusory and unexplained.

22 ⁴ Hogan denies describing Kovach’s skills as “light.” Hogan Dep. p. 161.

23 ⁵ Kovach also knew very little about the MEBI position before his interview.
24 Declaration of Kevin Kovach, (Dkt. #46) at ¶ 4 (explaining that prior to the interview,
25 Kovach did not know that the position was in the MEBI department or anything about
that department; he knew only that the position included some reception duties).

1 interviews quickly. Plaintiff has provided enough evidence to shed doubt on defendants'
2 proffered reasons. Therefore, the case must be submitted to a jury. See, e.g., Chen, 86
3 Wn. App. at 190; see also Rose, 902 F.2d at 1423 (explaining that an inference of
4 discrimination can arise when others not in the protected class are treated more
5 favorably).

6 **2. Retaliation Claim.**

7 Plaintiff contends that defendant violated the WLAD by refusing to consider him
8 for additional jobs after he complained to Suffis about his alleged discriminatory
9 treatment. RCW 49.60.210(1) provides that it is an unfair practice for employers “to
10 discharge, expel, or otherwise discriminate against any person because he or she has
11 opposed any practices forbidden by this chapter” Plaintiff’s retaliation claim is
12 subject to the *McDonnell Douglas* burden shifting analysis. See, e.g., Renz v. Spokane
13 Eye Clinic, 114 Wn. App. 611, 618 (2002) (citing *McDonnell Douglas Corp. v. Green*,
14 411 U.S. 792 (1973)). To establish a prima facie case of retaliation, a plaintiff must show
15 that 1) he engaged in statutorily protected activity, 2) the employer took some adverse
16 action against him, and 3) retaliation was a substantial factor behind the action. See, e.g.,
17 Washington v. Boeing, 105 Wn. App. 1, 14 (2000). To satisfy the third factor, plaintiff
18 must show some nexus between the protected activity and the adverse action. See, e.g.,
19 Francom v. Costco Wholesale Corp., 98 Wn. App. 845, 863 (2000). Once a plaintiff
20 establishes a prima facie case, the burden shifts to the employer to articulate a legitimate,
21 non-retaliatory reason for the adverse employment action. If it does so, the burden shifts
22 back to plaintiff to show that the employer’s stated reason was a pretext for a retaliatory
23 motive. See, e.g., Renz, 114 Wn. App. at 618-19.

24 In this case, defendant concedes that plaintiff’s internal complaint was protected
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1 by the WLAD. An employment action is sufficiently adverse to support a retaliation
2 claim if it “could well dissuade a reasonable worker from making or supporting a charge
3 of discrimination.” Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 57 (2006);
4 see also Crawford v. Metropolitan Gov’t of Nashville & Davidson County, __ U.S. __,
5 2009 U.S. LEXIS 870 at *14 (Jan. 26, 2009) (noting a law review article which found that
6 “fear of retaliation is the leading reason why people stay silent instead of voicing their
7 concerns about bias and discrimination”) (internal citation and quotation omitted).

8 In this case, defendants argue that plaintiff was not treated differently after he
9 complained because he continued to receive offers to work until he ceased calling in to
10 report his availability. Although that argument may undermine plaintiff’s damages at
11 some point, it ignores the fact that a jury could find that the posting of the complaint was
12 in itself an adverse action. A reasonable employee could be dissuaded from complaining
13 of discrimination if the contents of that complaint were posted on the database used for
14 hiring. Indeed, Suffis acknowledged that the posting was inappropriate, it could “create
15 bias” against the person, and that she would be concerned about retaliation based on the
16 posting. Suffis Dep. at pp. 95-97. Moreover, the posting occurred just one week after
17 plaintiff complained. The close temporal nexus is sufficient at this stage to raise an
18 inference that retaliation motivated the posting. See, e.g., Francom, 98 Wn. App. at 862
19 (“One factor supporting retaliatory motivation is proximity in time between the protected
20 activity and the employment action”). Defendant has not offered any explanation for the
21 posting. Therefore, it is not entitled to summary judgment on plaintiff’s retaliation claim.

22 **3. Individual Claims Against Hogan.**

23 To establish an equal protection violation, plaintiff must show that Hogan was
24 motivated by a discriminatory purpose based on his age or race. See, e.g., Thomas v. City
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1 of Beaverton, 379 F.3d 802, 812 (9th Cir. 2004). Defendants argue that plaintiff's claims
2 against Hogan must be dismissed because (1) plaintiff has failed to produce the necessary
3 evidence of intentional discrimination, and (2) Hogan is entitled to qualified immunity.

4 "The doctrine of qualified immunity protects government officials from liability
5 for civil damages insofar as their conduct does not violate clearly established statutory or
6 constitutional rights of which a reasonable person would have known." Pearson v.
7 Callahan, __ U.S. __, 2009 U.S. LEXIS 591 at * 14 (Jan. 21, 2009) (internal citation and
8 quotation omitted). Immunity questions should be resolved "at the earlier possible stage
9 in litigation" to avoid subjecting government officials to the expense of defending against
10 "insubstantial claims." Id. at *15 (internal citations and quotations omitted). The
11 Supreme Court has identified a two-step test for resolving qualified immunity claims: (1)
12 whether the facts that a plaintiff has shown make out a violation of a constitutional right,
13 and (2) whether the right at issue was "clearly established" at the time of the official's
14 alleged misconduct. Id. at *15-16 (citing Saucier v. Katz, 533 U.S. 194 (2001)). In
15 Pearson, the Supreme Court explained that the Saucier sequence is not mandatory,
16 though it is often beneficial. Id. at *22. If an official reasonably believed that his or her
17 conduct was lawful, qualified immunity applies. See, e.g., Jeffers v. Gomez, 267 F.3d
18 895, 910 (9th Cir. 2001). The standard "gives ample room for mistaken judgments by
19 protecting all but the plainly incompetent or those who knowingly violate the law."
20 Hunter v. Bryant, 502 U.S. 224, 229 (1991) (per curiam) (internal citation and quotation
21 omitted). The Court must view the facts in the light most favorable to plaintiff. Saucier,
22 533 U.S. at 201.

23 Plaintiff counters that Hogan is not entitled to qualified immunity because the right
24 to be free from discrimination and the prohibition on making employment decisions based
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1 on racial stereotypes was well established at the time of the interview. Although that is
2 true, the Court must also consider whether Hogan reasonably believed that her conduct
3 was lawful. Hogan believed that plaintiff was more interested in positions that involved
4 working with patients and/or in the hospitals. Hogan Decl. at ¶¶ 12-14. The evidence of
5 what occurred both during and after the interview supports her assumption.
6 Undisputedly, during the interview, Hogan said something to the effect of, “It sounds like
7 you might be interested in jobs at hospitals or jobs that involve patient care?” Plaintiff’s
8 Dep. at p. 30. Despite that clear question, plaintiff did not deny that he was interested in
9 those jobs or explicitly express interest in the MEBI job instead. In fact, plaintiff *was*
10 interested in jobs at the hospitals and jobs that involved patient care. *Id.* For purposes of
11 his discrimination claim, plaintiff can argue that he was too shocked by the abrupt nature
12 of the interview to counter Hogan’s assertion. However, in light of his apparent interest
13 in helping patients and failure to express interest in the MEBI position, it was reasonable
14 for Hogan to believe that he was not interested. This is particularly true because
15 applicants to the MEBI department frequently misunderstood that the nature of the
16 department’s work and believed that it involved patient care. It is reasonable that when
17 choosing between qualified applicants, Hogan recommended the person who seemed to
18 her to be more interested in the position. Furthermore, Hogan’s explanation for her
19 recommendation have been consistent. Shortly after the interviews, she told both
20 Hinkhouse and Vick that Prue was not interested in the position. Hinkhouse Dep. at pp.
21 110-11; Vick Dep. at pp. 40-41. Finally, although plaintiff contends that Hogan said
22 something to the effect that the job was not for him, the comment does not reflect
23 stereotyping when viewed in context. Hogan did not make the statement then steer
24 plaintiff towards lower-status positions. Rather, she offered him advice on how to find
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1 positions in patient care. Those positions are not inferior nor stereotypically associated
2 with any minority group. In sum, defendants have shown that Hogan reasonably believed
3 that her conduct did not violate the law. Under the circumstances, she is entitled to
4 qualified immunity.

5 **III. CONCLUSION**

6 For all of the foregoing reasons, the Court GRANTS IN PART AND DENIES IN
7 PART defendants' motion for summary judgment (Dkt. #32). Plaintiff's claims against
8 Hogan are dismissed because she is entitled to qualified immunity. Plaintiff may proceed
9 with his claims of discrimination and retaliation against the University. Within ten days
10 of the date of this order, the parties are ordered to file a joint status report stating when
11 they will be ready to proceed to trial.

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13 DATED this 5th day of February, 2009.

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16 Robert S. Lasnik
17 United States District Judge
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